

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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In re : Chapter 11
:
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
:
Debtors.¹ : (Jointly Administered)
:
:
: **Hearing Date: June 8, 2010 at 10:00 a.m.**
: **Objection Deadline: June 1, 2010 at 4:00 p.m.**
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**MOTION FOR AUTHORITY TO SELL DELAWARE STATE
HOUSING AUTHORITY SUBORDINATED MORTGAGE REVENUE
BONDS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES**

Advanta Corp. (“*Advanta*”), as debtor and debtor in possession in the above-referenced jointly administered chapter 11 cases, respectfully represents:

Relief Requested

1. By this motion (the “*Motion*”), Advanta seeks entry of an order, substantially in the form attached hereto as *Exhibit A*, authorizing, pursuant to section 363 of the Bankruptcy Code, the sale of Advanta’s investment in certain Series A Delaware State Housing

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BizEquity Corp. (8960), Ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Information regarding the Debtors’ businesses and the background relating to events leading up to these chapter 11 cases can be found in (i) the Declaration of William A. Rosoff in Support of the Debtors’ Chapter 11 Petitions and First-Day Motions, filed on November 8, 2009 (the “*Rosoff Declaration*”), the date the majority of Debtors filed their petitions under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”), and (ii) that certain supplement thereto, filed on November 20, 2009, the date Advanta Ventures Inc., BizEquity Corp., Ideablob Corp. and Advanta Credit Card Receivables Corp. filed their chapter 11 cases. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Further, in accordance with an order of this Court, the Debtors’ cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

Authority Subordinated Mortgage Revenue Bonds (the “**Bonds**”) to the issuer, Delaware State Housing Authority (“**DSHA**”), free and clear of all liens, claims and encumbrances.

2. In addition, in order to consummate the sale before DSHA’s offer expires and to return the sale proceeds to Advanta’s estate in a more expeditious manner, Advanta requests that any order approving the sale be effective immediately, and the Court waive the 14-day stay pursuant to Bankruptcy Rule 6004(h).

Sale of the Bonds

3. The Bonds are zero coupon bonds that mature in July of 2031, with a par value of \$1,485,000 and a book value as of April 30, 2010 of approximately \$457,000. The Bonds’ current book value reflects the deep discount typically applied to zero coupon bonds with long-term maturity dates.

4. Advanta originally purchased the Bonds in 1999 as a qualified investment under the Community Reinvestment Act of 1977, as amended, 12 U.S.C. §§ 2901-2908 (the “**CRA**”).² Advanta’s subsidiary banking institutions were CRA-subject institutions, and therefore received grades on their overall CRA performance from federal bank regulators. One of those subsidiaries, Advanta Bank (“**AB**”), received positive consideration on its CRA exams for Advanta’s investment in the Bonds. However, AB is now inactive and is winding down its business, and therefore has no need for a CRA program. Because Advanta no longer needs to

² The CRA was passed in 1977 to authorize federal bank regulators to use their authority “to encourage [financial] institutions to help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operation of such institutions.” 12 U.S.C. § 2901(b). Pursuant to this statutory mandate, federal bank regulators review the overall performance of covered banks in meeting their CRA obligations and provide a written report on such performance, a portion of which, including the overall rating, is released to the public. *Id.* §§ 2903, 2906. This record of performance is taken into account when banks seek approval of certain transactions, such as the opening of a branch, relocation of a home office, a merger, or acquisition. *Id.* §§ 2902(3), 2903(a). The appropriate financial supervisory agencies determine whether a financial institution’s application should be approved either in light of, or despite, their record of meeting community credit needs.

provide support to the CRA program of AB, Advanta's investment in the Bonds is no longer necessary.

5. Advanta purchased the Bonds over ten years ago and believes that the Bonds are illiquid in nature. There are several reasons that the Bonds can be categorized as illiquid. First, the Bonds provide no current income. Second, although no payments are made on zero coupon bonds until they mature, federal, state, and local income taxes may be levied on the imputed or "phantom" interest that accrues each year. Third, the long duration of the Bonds means that these securities' prices are particularly sensitive to changes in interest rates. Moreover, the Bonds are in certificate form, which adds a degree of complexity when selling or transferring them. As a result of these considerations, potential purchasers of the Bonds comprise a smaller segment of the bond market, and any bid for these securities would likely be discounted.

6. Advanta marketed the Bonds to DSHA. After conducting internal assessments and consulting with their outside financial advisors, DSHA submitted an indicative bid of approximately \$23 per bond. This bid amount is equivalent to 75% of the accreted value of the Bonds. A sale of the Bonds to DSHA would result in total proceeds of approximately \$346,000 and a yield to maturity of approximately 7%. DSHA's bid will expire on July 1, 2010.

7. Advanta also marketed the Bonds to several large investment banks with which it had existing relationships and that were fairly representative of the market: Barclays, Morgan Stanley, and Citigroup.³ Each bank was asked to submit non-binding bids for the Bonds. Advanta received indicative bids from two of the three investment banks. Each bid was less than DSHA's bid.

³ Advanta did not market the Bonds to investment banks with which it does not have an existing relationship, as such marketing attempt was unlikely to yield an indicative bid.

8. After marketing the Bonds, Advanta, in its business judgment, determined that DSHA's bid is the best and highest offer for the Bonds, given the illiquid market for such assets.

**Good Business Reasons Support
Advanta's Decision to Sell the Bonds**

9. Section 363(b)(1) provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a good business reason that justifies such action. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (stating that a court will “defer to the trustee’s judgment so long as there is a legitimate business justification” (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991))); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *Lionel Corp.* and requiring good faith); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (“The rule we adopt requires that a judge determining a § 363(b) application expressly find from the evidence presented before him at the hearing a good business reason to grant such an application.”); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 178 (D. Del. 1991) (concluding that the Third Circuit adopted the “sound business judgment” test in the *Abbotts Dairies* decision and affirming decision permitting debtor to sell assets where sound business reasons supported the sale); *In re Allegheny Int’l*, 117 B.R. 171 (W.D. Pa. 1990) (affirming bankruptcy court order allowing debtor to enter into financing arrangement because debtor provided good business reason for use of estate property pursuant to section 363(b)).

10. Advanta's decision to sell the Bonds to DSHA is an exercise of sound business judgment. First, as mentioned above, the Bonds provide no current income to Advanta's estate. Sale of the Bonds will allow Advanta to immediately realize additional funds for its estate, thereby increasing the pool of assets available for creditor distribution and furthering the liquidation efforts the Debtors have initiated during these chapter 11 cases. Second, Advanta believes that DSHA's bid represents the highest and best offer Advanta could receive for the Bonds. DSHA's bid is superior in amount to the indicative bids Advanta received from investment banks, which bids are fairly representative of the market for the Bonds. In addition, the price of the Bonds is likely to remain suppressed given their lack of liquidity and susceptibility to downward pressure in a rising interest rate environment. Finally, as previously stated, Advanta no longer needs its investment in the Bonds to provide CRA credit to the CRA program of Advanta Bank. Accordingly, Advanta has determined in its sound business judgment that a sale of the Bonds on the terms proposed in this Motion is in the best interests of Advanta, its estate, and its creditors.

An Auction of the Bonds Is Not Required

11. In accordance with Bankruptcy Rule 6004(f)(1), asset sales outside of the ordinary course of business may be by private or public sale. FED. R. BANKR. P. 6004(f)(1). A debtor has broad discretion in determining the manner in which its assets are sold. *Berg v. Scanlon (In re Alisa P'ship)*, 15 B.R. 802, 802 (Bankr. D. Del. 1981) (“[T]he manner of [a] sale is within the discretion of the trustee . . .”); *In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (noting that a trustee has “ample discretion to administer the estate, including authority to conduct public or private sales of estate property”) (internal quotations and citations omitted). As long as a debtor maximizes the return to its estate, a court should defer to a debtor's business

judgment. *In re Bakalis*, 220 B.R. at 532 (recognizing that although a trustee's business judgment enjoys great judicial deference, a duty is imposed on the trustee to maximize the value obtained from a sale); *In re Nepsco, Inc.*, 36 B.R. 25, 26 (Bankr. D. Me. 1983) ("Clearly, the thrust of th[e] statutory scheme [governing 363 sales] is to provide maximum flexibility to the trustee, subject to the oversight of those for whose benefit he acts, i.e., the creditors of the estate."). Accordingly, if a debtor concludes that conducting a private sale, as opposed to a public auction, is in the best interest of the estate, the debtor should be permitted to do so. *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P'ship (In re Woodscape Ltd. P'ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect to sales of estate property, "[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction.").

12. As discussed above, given the illiquid market for the Bonds, the certainty of DSHA's offer outweighs the costs and risks of pursuing alternatives to the proposed transaction. Because of their illiquid nature and physical form, the Bonds are of limited interest to investment banks or a broad wholesale audience. Advanta actively marketed the Bonds to large investment banks representative of the market for such assets, but received no bid higher than DSHA's. Indeed, one firm chose not to respond to Advanta's request for a non-binding bid, which indicates that market appetite for these securities is not robust. As a result of its marketing efforts, Advanta believes that it is in the best interests of its estate to accept DSHA's bid and consummate the sale of the Bonds to DSHA, and that a public auction will result in unnecessary additional costs to its estate that will likely yield no higher or better offers.

13. In light of the foregoing, Advanta respectfully requests that, pursuant to section 363(b) of the Bankruptcy Code, the Court authorize the sale of the Bonds as provided for herein.

**Sale of the Bonds Free and Clear
of Liens, Claims, and Encumbrances is Appropriate**

14. Advanta further submits that it is appropriate that its investment in the Bonds be sold free and clear of liens, claims, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, with any such liens, claims, encumbrances, or interests to attach to the sale proceeds thereof. Section 363(f) of the Bankruptcy Code provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f). Because section 363(f) is stated in the disjunctive, when selling property of the estate it is only necessary to meet one of the five conditions of that section. *See In re Kellstrom Indus. Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive. Therefore, if any of the five conditions is met, the debtor has the authority to conduct the sale free and clear of all liens.” (citing *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988))).

15. As of the date hereof, Advanta is not aware of any liens or interests held by any party in respect of Advanta's rights to the Bonds. Advanta submits that the Court should authorize the liquidation of the Bonds free and clear of any and all liens, claims and encumbrances, with any of the same to be transferred and attached to the net proceeds of the sale, with the same validity and priority that such liens, claims, and encumbrances had against the rights to the Bonds. Thus, the sale of the Bonds free and clear of liens, claims and encumbrances will satisfy the statutory prerequisites of section 363(f) of the Bankruptcy Code.

16. In light of the foregoing, Advanta respectfully requests that, pursuant to section 363 of the Bankruptcy Code, the Court authorize Advanta to sell the Bonds to DSHA free and clear of liens, claims, and encumbrances.

Relief Under Bankruptcy Rule 6004(h)

17. Bankruptcy Rule 6004(h) provides that an 'order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.'" In order to consummate the sale of the Bonds to DSHA by July 1, 2010, which is the date DSHA's bid expires, Advanta requests that any order approving the sale of the Bonds be effective immediately by providing that the 14-day stay is waived.

Jurisdiction

18. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Notice

19. No trustee or examiner has been appointed in these chapter 11 cases. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the

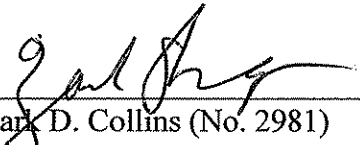
District of Delaware; (ii) counsel to the Creditors' Committee; (iii) Bank of New York Mellon, as trustee under the Investment Note Indenture and Law Debenture Trust Company of New York, as trustee under the 8.99% Indenture (both as defined in the Rosoff Declaration); (iv) DSHA; (v) the Delaware Attorney General's Office; and (vi) those parties who have requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "*Notice Parties*"). Advanta respectfully submits that no further notice of this Motion is required.

No Prior Request

20. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE, Advanta respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: May 18, 2010
Wilmington, Delaware



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ATTORNEYS FOR
DEBTORS AND DEBTORS IN
POSSESSION

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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: Chapter 11
In re :
: Case No. 09-13931 (KJC)
ADVANTA CORP., *et al.*, :
: (Jointly Administered)
Debtors.¹ :
: Hearing: June 8, 2010 at 10:00 a.m. (EDT)
-----X Obj. Deadline: June 1, 2010 at 4:00 p.m. (EDT)

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on May 18, 2010, Advanta Corp. and its affiliated debtors in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “*Debtors*”) filed the **Motion for Authority to Sell Delaware State Housing Authority Subordinated Mortgage Revenue Bonds Free and Clear of Liens, Claims, and Encumbrances** (the “*Motion*”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801 (the “*Bankruptcy Court*”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the Motion must be in writing, filed with the Clerk of the Bankruptcy Court and served upon and


¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BizEquity Corp. (8960), Ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328). Each of the Debtors (other than Advanta Credit Card Receivables Corp. and the Great Expectations entities) maintains its principal corporate office at Welsh & McKean Roads, P.O. Box 844, Spring House, Pennsylvania 19477-0844. Advanta Credit Card Receivables Corp. maintains its principal corporate office at 2215 B. Renaissance Drive, Suite 5, Las Vegas, Nevada 89119, and the Great Expectations entities maintain their principal corporate office at 1209 Orange Street, Wilmington, Delaware 19801.

received by the undersigned counsel for the Debtors on or before **June 1, 2010 at 4:00 p.m. (Eastern Daylight Time).**

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served and received and such objection is not otherwise timely resolved, a hearing to consider such objection and the Motion will be held before The Honorable Kevin J. Carey at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom 5, Wilmington, Delaware 19801 on **June 8, 2010 at 10:00 a.m. (Eastern Daylight Time).**

IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED, SERVED AND RECEIVED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 18, 2010
Wilmington, Delaware



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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

Exhibit A

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

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:
In re : Chapter 11
:
ADVANTA CORP., *et al.*, : Case No. 09-13931 (KJC)
:
Debtors.¹ : (Jointly Administered)
:
-----X **Re: Docket No. ____**

**ORDER AUTHORIZING SALE OF DELAWARE STATE
HOUSING AUTHORITY SUBORDINATED MORTGAGE REVENUE
BONDS FREE AND CLEAR OF LIENS, CLAIMS, AND ENCUMBRANCES**

Upon the motion, dated March 17, 2010 (the “*Motion*”), of Advanta Corp. (“*Advanta*”), as debtor and debtor in possession in the above-referenced jointly administered chapter 11 cases, for authorization to sell the Bonds² to the issuer, DSHA, free and clear of liens, claims, and encumbrances, all as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and the relief requested in the Motion being in the best interests of Advanta, its estate,

¹ The Debtors in these jointly administered chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are Advanta Corp. (2070), Advanta Investment Corp. (5627), Advanta Business Services Holding Corp. (4047), Advanta Business Services Corp. (3786), Advanta Shared Services Corp. (7074), Advanta Service Corp. (5625), Advanta Advertising Inc. (0186), Advantennis Corp. (2355), Advanta Mortgage Holding Company (5221), Advanta Auto Finance Corporation (6077), Advanta Mortgage Corp. USA (2654), Advanta Finance Corp. (8991), Advanta Ventures Inc. (5127), BizEquity Corp. (8960), Ideablob Corp. (0726), Advanta Credit Card Receivables Corp. (7955), Great Expectations International Inc. (0440), Great Expectations Franchise Corp. (3326), and Great Expectations Management Corp. (3328).

² Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion.

and its creditors; and the Court having reviewed the Motion; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court, and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted; and it is further

ORDERED that, pursuant to section 363(b)(1) of the Bankruptcy Code, Advanta is authorized to sell the Bonds to DSHA; and it is further

ORDERED that, pursuant to section 363(f) of the Bankruptcy Code, the sale of the Bonds to DSHA shall be free and clear of any and all liens, claims, and encumbrances, with such liens, claims, and encumbrances, if any, to attach to the proceeds of the Bonds with the same force, effect, and priority as such liens, claims, and encumbrances have on the Bonds, as appropriate; and it is further

ORDERED that the rights and defenses of Advanta and any other party in interest with respect to any assertion that any liens, claims, and encumbrances have attached to the proceeds of the sale of the Bonds are hereby preserved; and it is further

ORDERED that Advanta is authorized to execute, deliver, implement and fully perform any and all obligations, instruments, documents and papers and to take any and all actions reasonably necessary or appropriate to effectuate the sale of the Bonds to DSHA and perform any and all obligations contemplated therein without the need for further corporate authorization; and it is further

ORDERED that the 14-day stay under Rule 6004(h) of the Federal Rules of Bankruptcy Procedure is waived; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all

matters arising from or related to the implementation, interpretation and/or enforcement of this
Order.

Dated: June _____, 2010
Wilmington, Delaware

THE HONORABLE KEVIN J. CAREY
CHIEF UNITED STATES BANKRUPTCY JUDGE